



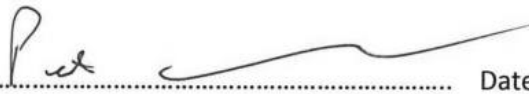
PUBLIC INTEREST DISCLOSURE PROCEDURES

Public Interest Disclosure Act 2013

Procedures for facilitating and dealing with public interest disclosures relating to the Australian Public Service Commission

I, Peter Woolcott, Australian Public Service Commissioner (the Commissioner), acting in my capacity as Principal Officer of the Australian Public Service Commission (the Commission), establish these Procedures under section 59 of the *Public Interest Disclosure Act 2013* (PID Act).

These procedures commence on

Signed:  Dated 21/9/18

Statement of Commitment

The Commission is committed to the highest standards of ethical and accountable conduct. To this end, the Commission encourages people to report suspected wrongdoing, and will ensure that those who report, or who are considering making a report, are properly supported and protected from any adverse consequences relating to the reporting. These procedures set out how the Commission will give effect to this commitment.

In order to uphold the good reputation of the Commission and to provide a safe and ethical workplace, public officials who are aware of wrongdoing in the Commission (or elsewhere in the APS) are encouraged to report such instances in accordance with the provisions set out in these procedures.

These procedures may be amended from time to time to ensure their continued compliance with the PID Act.

TABLE OF CONTENTS

1. INTRODUCTION	3
1.1 Public Interest Disclosure Act 2013 (PID Act)	3
1.2 Application of procedures	3
1.3 What is a public interest disclosure?	4
1.4 Public Officials	4
1.5 Authorised Officers	4
1.6 What is disclosable conduct?	4
2. SUPPORT, PROTECTION AND REPRISALS	5
2.1 The Commission encourages the making of reports of disclosable conduct	5
2.2 Protecting the discloser's identity	5
2.3 Immunity from liability	6
2.4 Reprisal	6
2.5 Support for Disclosers	7
2.6 Supporting and protecting a person against whom a disclosure has been made	7
3. THE DISCLOSURE PROCESS	8
3.1 Making a disclosure under PID	8
4. ANONYMOUS DISCLOSURES	9
4.1 Types of anonymous disclosures	9
4.2 Reasons why a discloser may consider identifying themselves	9
5. PROCEDURES FOR SUPERVISORS AND MANAGERS	10
6. PROCEDURES FOR AUTHORISED OFFICERS	10
6.1 Authorised Officer must advise disclosers and potential disclosers about the PID Act	10
6.2 Authorised Officer must decide whether or not to allocate a disclosure	10
6.3 Where Authorised Officer makes an internal disclosure	11
6.4 Record of allocating the handling of a disclosure	12
6.5 Risk assessment	12
7. DECIDING WHETHER OR NOT TO INVESTIGATE	13
7.1 Considerations	13
7.2 Decision not to investigate	14
7.3 Where the disclosure is to be investigated	14
8. PROCEDURES FOR INVESTIGATORS	14
8.1 Interviewing the witnesses	14
8.2 Procedural fairness	15
8.3 Time limits	16
8.4 Confidentiality	16
9. REPORTS OF INVESTIGATIONS	16
10. RECORD-KEEPING, MONITORING AND EVALUATION	17
10.1 Record keeping	17
10.2 Monitoring and Evaluation	18
ATTACHMENT A- DIAGRAM OF WHAT IS A PUBLIC INTEREST DISCLOSURE	19
ATTACHMENT B- LIST OF AUTHORISED OFFICERS FOR THE APSC	20
ATTACHMENT C- INDICATORS OF A HIGHER RISK OF REPRISAL OR WORKPLACE CONFLICT	21

1. INTRODUCTION

1.1 Public Interest Disclosure Act 2013 (PID Act)

The *Public Interest Disclosure Act 2013* (PID Act) commenced on 15 January 2014 and promotes integrity and accountability in the Australian public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and requiring agencies to take action in relation to public interest disclosures.

The purpose of the PID Act is to promote integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the disclosure of information by public officials about suspected wrongdoing in the public sector;
- ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences; and
- ensuring that disclosures by public officials are properly investigated and dealt with.

Section 59 of the PID Act requires the Australian Public Service Commissioner (as principal officer under the PID Act) to establish procedures for facilitating and dealing with public interest disclosures.

1.2 Application of Procedures

These procedures apply to internal disclosures that relate to the Commission and are made by a current or former public official. An internal disclosure may be made to the supervisor of the discloser, an authorised officer of the Commission, an authorised officer of another agency, or the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS)) for intelligence related disclosures.

Where a disclosure has been allocated to the Commission from another agency (including the Ombudsman or IGIS) and the authorised officer reasonably believes the disclosure to relate to the Commission, the authorised officer will accept the allocation and deal with the disclosure in accordance with these procedures.

In circumstances where an individual discloses information that they had not obtained whilst a public official, the authorised officer may deem that person to be a public official for the purposes of the PID Act.

These procedures must be complied with when a supervisor or an authorised officer receives a disclosure. Other legislative obligations may apply in addition to these procedures, for example, in relation to work health and safety.

A reference to the Commissioner is also a reference to a public official who has been delegated powers under section 77 of the PID Act. A person who has been delegated powers under the PID Act must not be a person with a direct or indirect interest in the matter, and they must be free of actual or apparent bias.

A disclosure report made to a person who is authorised to receive it under these procedures will not in itself be a breach of the provisions relating to unauthorised disclosure of information (see section 70 of the *Crimes Act 1914* and *Public Service Regulation 2.1*).

1.3 What is a public interest disclosure?

A public interest disclosure is a disclosure by a current or former public official of suspected wrongdoing in the Commonwealth public sector. There are four different types of public interest disclosure sanctioned by the PID Act: internal disclosure, external disclosure, emergency disclosure and legal practitioner disclosure.

An internal disclosure is made when:

- a person who is or has been a **public official**;
- the person makes the disclosure to their supervisor or manager or an **Authorised Officer** of the Commission; and
- the information tends to show, or the discloser believes on reasonable grounds the information tends to show, one or more instances of **disclosable conduct**.

Internal disclosures, made about the Australian Public Service Commission, are the focus of these procedures.

The elements of making a disclosure under the PID Act are summarised in the diagram at **Attachment A**.

1.4 Public Officials

A person must be a current or former 'public official' to make a disclosure. This broad term includes Australian Government public servants, statutory office holders and staff of Commonwealth contracted service providers. An Authorised Officer can also deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure.

1.5 Authorised Officers

For the purposes of these procedures, an authorised officer in the Commission is:

- The Commissioner (as principal officer under the PID Act); or
- An employee of the Commission appointed, in writing, by the principal officer as an authorised officer for the purposes of the PID Act.

The names and contact details of the authorised officers are at **Attachment B**.

1.6 What is disclosable conduct?

The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.

In summary, disclosable conduct is conduct by an Agency or by the public official that:

- contravenes a law of the Commonwealth, a State or a Territory; or
- occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory; or
- constitutes maladministration, including conduct that:
 - is based on improper motives
 - is unreasonable, unjust or oppressive, or
 - is negligent, or
- is an abuse of public trust; or

- is fabrication, falsification or deception in relation to scientific research, or misconduct in relation to scientific work; or
- results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act; or
- unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person; or
- results in a danger to the environment or results in or increases the risk of a danger to the environment; or
- is prescribed by the PID Rules; or
- is engaged in by a public official that:
 - involved abuse of the public official's position, or
 - could, if proved, give reasonable grounds for disciplinary action against the public official.

It does not matter whether the disclosable conduct occurred before or after 15 January 2014.

It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

2. SUPPORT, PROTECTION AND REPRISALS

2.1 The Commission encourages the making of reports of disclosable conduct

The Commission encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.

The Commission will take active steps to support and to protect persons who make disclosures under the PID Act.

The Commission recognises it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our processes more efficient. Another potential benefit is increasing the confidence of our workers in the way the Commission is managed.

The Commission also recognises that a decision by the Commission not to deal with a disclosure as a disclosure under the PID Act, when as a matter of law that is how the disclosure should have been dealt with, could be seriously detrimental to the discloser and to the effective operation and the good reputation of the Commission.

2.2 Protecting the discloser's identity

The PID Act provides protection for public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed.

A person commits an offence if they disclose or use information that is likely to enable the identification of the discloser unless the discloser consents, the identifying information has already been lawfully published, or the disclosure or use:

- is for the purposes of the PID Act;
- is required under another Commonwealth law or a prescribed State or Territory law; or

- is in connection with the Ombudsman's functions under section 5A of the *Ombudsman Act 1976* or the IGIS's functions under section 8A of the *Inspector-General of Intelligence and Security Act 1986*.

In order to protect a discloser's identity, the Commission will:

- limit the number of people who are aware of the discloser's identity or information that would tend to identify them;
- remind each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence;
- assess whether anyone who is aware of the discloser's identity may have a motive to take reprisals against the discloser or impede the progress of the investigation, and monitor the situation; and
- ensure the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff.

2.3 Immunity from liability

A person who makes a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure.

No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against a person on the basis of the public interest disclosure. A contract to which the discloser is a party cannot be terminated because of the public interest disclosure.

However, these immunities do not apply if the discloser:

- knowingly makes a statement that is false or misleading; or
- makes a disclosure knowing that it contravenes a designated publication restriction and without a reasonably excuse for doing so.

Making a disclosure about matters that include a discloser's own wrongdoing does not protect them from liability for their wrongdoing.

2.4 Reprisals

A person who makes a public interest disclosure will be protected from reprisal in the following ways:

- it is a criminal offence to cause detriment to a person because it is suspected or believe that they have made or will make a public interest disclosure;
- a discloser has the right to apply for an injunction to prevent a reprisal; and
- a discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

The Commission will take every allegation of reprisal seriously. Every allegation will be recorded and responded to. All staff involved in handling public interest disclosures and aware of a discloser's identity, will monitor the work environment for signs of detriment and if necessary, take corrective action early.

What is reprisal?

Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure.

'Detriment' includes any disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage.

What is not reprisal?

Administrative action that is reasonable to protect the discloser from detriment is not reprisal. For example, where a person has made a disclosure in relation to practices in their immediate work area, it may be appropriate to transfer them to another work area to ensure they are not harassed or victimised.

Making a disclosure does not exclude the discloser from reasonable management action for any unsatisfactory performance or wrongdoing on their part- such action is not a reprisal.

2.5 Support for disclosers

The Commission will provide support for disclosers, including:

- acknowledgment for having come forward with a report of wrongdoing;
- an offer of support and information about what options are available; and
- an assurance the Commission will take all reasonable steps necessary to protect them.

A discloser who is finding the process stressful or concerning may also access the Employee Assistance Program.

2.6 Supporting and protecting a person against whom a disclosure has been made

The Commission will provide support to a person who is subject to an allegation made in a public interest disclosure. The person will also be accorded procedural fairness. This can include the following actions:

- providing the person information about their rights and obligations under the PID Act;
- providing the person information about the Commission's investigation procedures and any other relevant matter; including informing them of the progress of any investigation;
- ensuring the identity of the person is protected as much as reasonably practicable; and
- advising them of the availability of the Employee Assistance Program.

3. THE DISCLOSURE PROCESS

3.1 Making a disclosure

All public officials and former public officials are entitled to make a disclosure under the PID Act, including:

- all employees of the Commission and former employees of the Commission
- all contracted service providers and their employees who provide, or provided, services to the Commission under a contract with the Commission.

A public interest disclosure may be made anonymously or openly and orally or in writing.

Where a public official makes a public interest disclosure they do not have to state or intend that they are doing so under the PID Act. Public officials who are considering making a disclosure should, in the first instance, contact one of the Commission's Authorised Officers to obtain information about making a public interest disclosure under the PID Act.

Employees in the Commission may make a disclosure of disclosable conduct to their supervisor or manager, or to an authorised officer or, in certain circumstances, to the Ombudsman (refer Attachment A).

Where possible, an employee in the Commission should make their public interest disclosure to an authorised officer rather than their manager or supervisor.

Note: Authorised Officers in the Commission have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act. This clause does not prevent an employee in the Commission from making a disclosure to their supervisor or manager.

The information contained in a disclosure should be clear and factual, and avoid speculation, personal attacks and emotive language. It should contain supporting evidence where it is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

In making a disclosure, the discloser should consider providing the following information to assist the authorised officer and/or principal officer to decide how the disclosure should be handled:

- their name and contact details;
- the nature of the suspected wrongdoing;
- who they think committed the wrongdoing;
- when and where the suspected wrongdoing occurred;
- relevant events surrounding the issue;
- if they did anything in response to the suspected wrongdoing;
- whether others know about the suspected wrongdoing and have allowed it to continue;
- whether they believe their information is a public interest disclosure under the PID Act; and
- if they are concerned about possible reprisal as a result of making a disclosure.

It is important that a potential discloser does not investigate a matter themselves before making a disclosure. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

Once a public interest disclosure is made, it cannot be withdrawn. A disclosure may however state they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact

details being provided to the Principal Officer and/or delegate. If a discloser requests that a matter not be investigated, this should be a consideration that is taken into account in determining whether to exercise the discretion not to investigate or investigate further. The Commission can however still choose to investigate the disclosure.

Upon receiving a disclosure of disclosable conduct from a public official, a supervisor, manager or Authorised Officer must deal with the disclosure in accordance with the PID Act and these procedures.

4. ANONYMOUS DISCLOSURES

4.1 Types of anonymous disclosures

All current and former public officials and others are able to make disclosures in an anonymous way if they wish to do so.

A discloser is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.

Where an authorised officer receives an anonymous disclosure they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to making a disclosure. However, if the authorised officer cannot contact the discloser, no determination can be made because the authorised officer must be able to give written notice of the determination to the individual (see s70(1)).

Where an authorised officer decides to make a determination under section 70 that the Act has effect as if the individual had been a public official, the authorised officer should seek assistance from the Legal team on drafting the written notice. The written notice must be given to the individual.

4.2 Reasons why a discloser may consider identifying themselves

There are a variety of reasons why a discloser may decide to identify themselves to an authorised officer, or at the very least provide a means of contact, including:

- the PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced. If the person's identity needs to be disclosed or is likely to become apparent, the Commission should discuss this with them;
- it will be difficult to ensure protection from reprisal if the Commissioner does not know the discloser's identity;
- the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If they cannot contact the person to seek necessary further information, the matter may not proceed;
- it may also be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigation has the discretion not to investigate, or investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information and assistance if needed.
- a discloser who does not provide a means of contact cannot be updated on the progress of the matter, including on the outcome of the investigation.

A person who has made an anonymous disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

5. PROCEDURES FOR SUPERVISORS AND MANAGERS

Where a public official in the Commission discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe the information concerns, or could concern, disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an authorised officer in the Commission.

The supervisor or manager must make a written record of the fact of the disclosure, and if the disclosure is not in writing, make a written record of the substance of the disclosure and the time and date of the disclosure. The person who received the disclosure must ask the discloser to sign the record of the disclosure, where practicable.

Where a supervisor or manager has given information to an authorised officer and is able to contact the discloser, they must inform the discloser that they have given the information to an authorised officer in the Commission and advise the discloser of the name and contact details of that authorised officer.

6. PROCEDURES FOR AUTHORISED OFFICERS

6.1 Authorised Officer must advise disclosers and potential disclosers about the PID Act

Where:

- a person discloses, or is proposing to disclose, information to an authorised officer which the authorised officer has reasonable grounds to believe may be disclosable conduct; and
- the authorised officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure; and
- the authorised officer is aware of the contact details of the person;

the authorised officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the PID Act; and
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure; and
- advise the person of any orders or directions that may affect disclosure of the information.

6.2 Authorised Officer must decide whether or not to allocate a disclosure

Where a public official makes a disclosure of disclosable conduct directly to an authorised officer, the authorised officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

The authorised officer must ask the discloser to sign the written record of the disclosure, where this is practicable.

Where a disclosure has been given to or made to an authorised officer, the authorised officer must use their best endeavours to decide on the allocation of the disclosure within **14 days** after the disclosure is given to or made to the authorised officer.

An authorised officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Note: The basis on which an authorised officer could be satisfied of this include: that the disclosure has not been made by a person who is, or was, a public official; that the disclosure was not made to an authorised internal recipient or supervisor; that the disclosure is not about disclosable conduct; that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

Where an authorised officer receives a disclosure, the authorised officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.

Where an authorised officer decides that a disclosure that has been made to them is not to be allocated, they must where the discloser's contact details are known to the authorised officer, advise the discloser in writing of:

- the reasons why the disclosure is not to be allocated; and
- any other courses of action that might be available to the discloser under other laws of the Commonwealth.

Where the authorised officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:

- consents to the authorised officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates; and
- wishes the disclosure to be investigated.

The authorised officer must make a written record of the discloser's responses (if any) to the questions referred to above.

Where a discloser does not respond within **7 days** to the questions referred to above the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and the discloser is taken to wish the disclosure to be investigated.

6.3 Where Authorised Officer allocates an internal disclosure

An authorised officer must obtain the consent of an authorised officer in another agency before the first authorised officer can allocate an internal disclosure to that agency.

Where an authorised officer in the Commission allocates a disclosure to an agency they must inform the principal officer of that agency of:

- the allocation to the agency;
- the information that was disclosed to the authorised officer;
- the suspected disclosable conduct; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Principal Officer being informed – the discloser's name and contact details.

If the authorised officer allocated a disclosure to an agency, that is not the Ombudsman, the IGIS or an intelligence agency, he or she will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the authorised officer will inform the IGIS of this in writing.

Where the authorised officer is aware of the contact details of the discloser the authorised officer must inform the discloser, in writing, of the allocation and the information that has been provided to the principal officer of the relevant agency.

6.4 Record of allocating the handling of a disclosure

When an authorised officer allocates the handling of a disclosure to one or more agencies, he or she must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision; and
- the consent provided by the authorised officer of the agency to which the allocation is made.

The authorised officer must also keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the day and time the discloser was notified; and
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential.

6.5 Risk Assessment

Where an authorised officer in the Commission allocates a disclosure, they must conduct a risk assessment on whether reprisals may be taken against the discloser based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager.

In conducting the risk assessment, authorised officers will adopt the following framework which entails four steps:

- **Identifying** – are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- **Assessing** – what is the likelihood and consequence of reprisals or related workplace conflict?
- **Controlling** – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
- **Monitoring and reviewing** – have the strategies been implemented and were they effective?

The table at **Attachment C** provides a summary of the risk factors that should be considered when assessing the risk of any reprisal against the discloser.

The Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013' provides detailed information on how to carry out a risk assessment.

7. DECIDING WHETHER OR NOT TO INVESTIGATE

7.1 Considerations

Where an authorised officer allocates an internal disclosure to the principal officer or nominated delegate and the principal officer or delegate has been given the contact details of the discloser, the principal officer or delegate must, **within 14 days** after the disclosure was allocated to the Commission, inform the discloser in writing that the principal officer or delegate may decide:

- not to investigate the disclosure; or
- not to investigate the disclosure further;

and the principal officer or delegate must inform the discloser of the grounds on which that decision will be taken.

The principal officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an authorised officer (whether from within or without the Commission) consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure under the PID Act.

In broad terms, the principal officer or delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act); or
- the information does not to any extent concern **serious** disclosable conduct; or
- the disclosure is frivolous or vexatious; or
- the disclosure is substantially the same as a disclosure that has been investigated under the PID Act; or
- the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth; and
 - it would be inappropriate to conduct another investigation at the same time; or
 - the principal officer is reasonably satisfied that there are no matters that warrant further investigation; or
- the discloser has informed the principal officer that they do not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details; or
 - the discloser has refused or has failed or is unable to give the investigator the information they requested; or
 - of the age of the information.

Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's '[Agency Guide to the Public Interest Disclosure Act 2013](#)'.

7.2 Decision not to investigate

Where the principal officer or delegate decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the principal officer or delegate must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth.

7.3 Where the disclosure is to be investigated

Where a matter is required to be investigated, and where the principal officer or delegate has been given the name and contact details of the discloser, the principal officer or delegate must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation.

If the principal officer or delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the principal officer or delegate must inform the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth.

8. PROCEDURES FOR INVESTIGATORS

Where the principal officer or delegate has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.

The principal officer or delegate must be independent and unbiased in investigating the matter. They must ensure that they do not have an actual or perceived conflict of interest.

The principal officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

When conducting an investigation the principal officer or delegate must ensure that a decision is based on evidence that is sufficient to prove a fact is made on the balance of probabilities.

The principal officer or delegate, in conducting an investigation under these procedures, must comply with:

- the Ombudsman's Standard, and
- to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines; and
 - these procedures; and
 - the procedures established under s 15(3) of the *Public Service Act 1999*.

8.1 Interviewing witnesses

Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:

- the identity and function of each person conducting the interview; and
 - the process of conducting an investigation; and
 - the authority of the investigator under the PID Act to conduct an investigation; and
 - the protections provided to the person by section 57 of the PID Act;
- and

An investigator should also inform the person of their duty:

- if they are a public official – to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official’s privilege against incriminating themselves or exposing themselves to a penalty); and
- not to take or threaten to take reprisal action against the discloser; and
- subject to the PID Act, not to disclose the identity of the person who made the disclosure.

Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.

Where the investigator is aware of the discloser’s identity and considers that it is necessary to reveal the discloser’s identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

8.2 Procedural fairness

Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require that the discloser’s identity be revealed to the person who is the subject of the disclosure.

Where the investigator in preparing the report of their investigation proposes to:

- make a finding of fact; or
- express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the investigator or delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: The above paragraph will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.

The investigator must ensure that the evidence that is relied on in an investigation is relevant.

Note: In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

8.3 Time limits

The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

A request to the Ombudsman for an extension of time should be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.

An application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.

An investigation that is not completed within time does not become invalid.

8.4 Confidentiality

The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any interviews conducted by an authorised officer or delegates (including investigators) should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

9. Reports of investigations

In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act and these procedures.

A report of an investigation under the PID Act must set out:

- the matters considered in the course of the investigation; and
- the duration of the investigation; and
- the investigator's findings (if any); and
- the action (if any) that has been, is being or is recommended to be taken; and
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the Commission's response to those claims and that evidence

and, where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct; and
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates; and
- explain the steps taken to gather evidence; and

- set out a summary of the evidence; and
- set out any recommendations made based on that evidence.

Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing:

- that the report has been completed; and
- whether the report was completed within the time limit provided for by the PID Act.

The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.

The investigator may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information.

The investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

10. RECORD-KEEPING, MONITORING AND EVALUATION

10.1 Record-keeping

Where an authorised officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the authorised officers, delegates (including investigators) or other employees in the Commission who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).

Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be marked in accordance with the Protective Security Policy Framework (PSPF) Security Classification System and stored in the appropriate storage container.

Any email messages sent by authorised officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.

Where a person will cease being an authorised officer in the Commission (including because of resignation or movement to another agency), their PID records must be transferred to another authorised officer in the Commission.

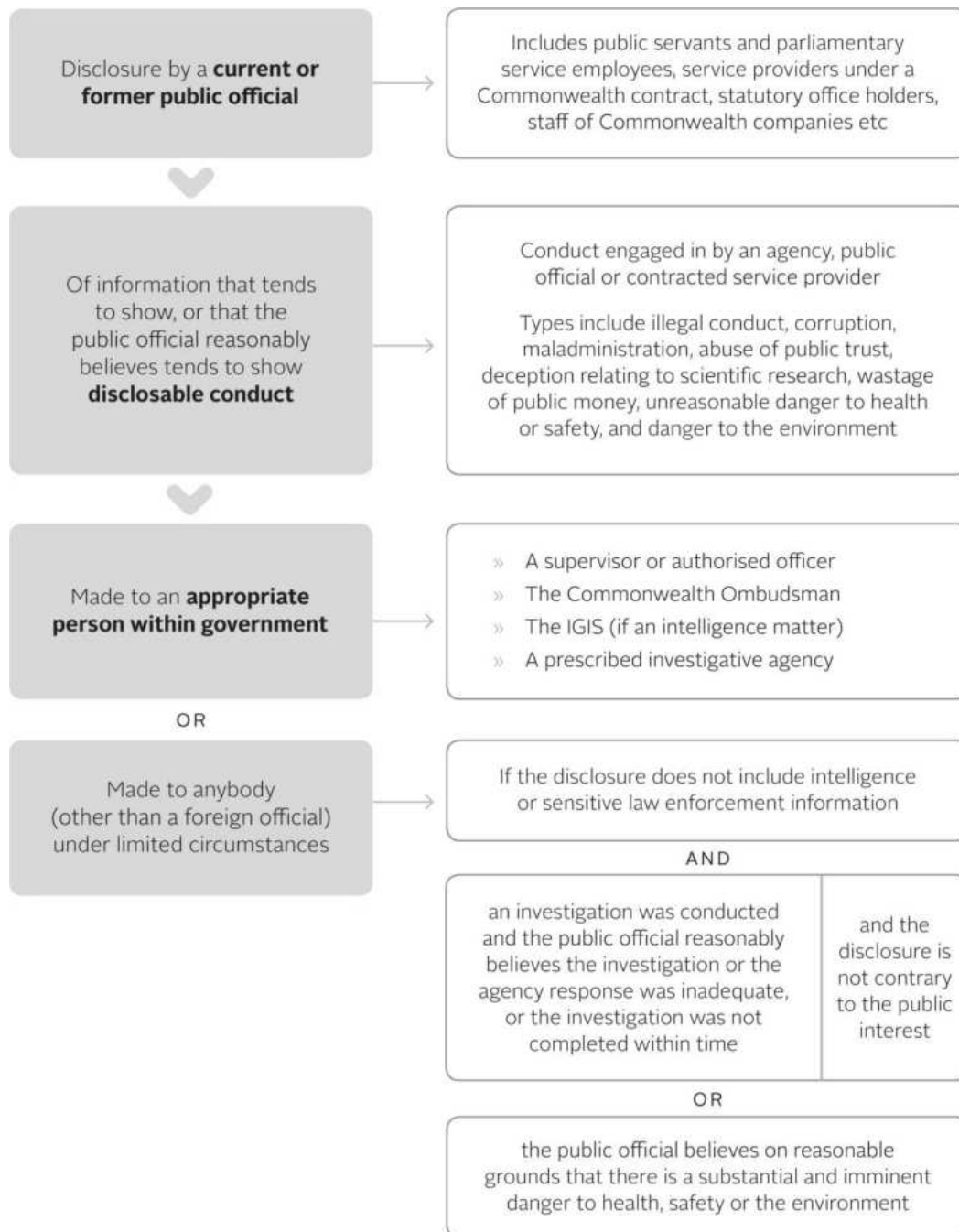
10.2 Monitoring and evaluation

Each authorised officer must complete the PID spreadsheet stored in Squirrel for all new disclosures received by them (Squirrel reference D18/30556). Only authorised officers and members of the Commission's Legal Services team have access to this document.

The Legal Services Team will routinely provide de-identified reports to the Executive in relation to disclosures received under the PID Act.

ATTACHMENT A

WHAT IS A PUBLIC INTEREST DISCLOSURE?



ATTACHMENT B

AUTHORISED OFFICERS FOR THE AUSTRALIAN PUBLIC SERVICE COMMISSION

The names and contact details for the Authorised Officers within the Office are as follows:

Michelle Coffill
Michelle.coffill@apsc.gov.au
02 6202 3556

Michael McAlister
Michael.mcalister@apsc.gov.au
02 6202 3872

Katherine Gifford
Katherine.gifford@apsc.gov.au
02 6202 3957

Glenys Agnew
Glenys.agnew@apsc.gov.au
02 6202 3954

The Authorised Officers may also be contacted by:

- Emailing the Commission at PID@apsc.gov.au.

In the subject line you should indicate that your PID is about the Australian Public Service Commission.

- Writing to the Authorised Officer at GPO Box 3176, Canberra ACT 2601. You should mark any envelopes or external covers 'Confidential—APSC PID.'

ATTACHMENT C

INDICATORS OF A HIGHER RISK OF REPRISALS OR WORKPLACE CONFLICT

Threats or past experience	Has a specific threat against the discloser been received? Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues? Is there a history of reprisals or other conflict in the workplace? Is it likely that the disclosure will exacerbate this?
Confidentiality unlikely to be maintained	Who knows that the disclosure has been made or was going to be made? Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace? Who in the workplace knows the discloser's identity? Is the discloser's immediate work unit small? Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace? Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated? Can the disclosure be investigated while maintaining confidentiality?
Significant reported wrongdoing	Are there allegations about individuals in the disclosure? Who are their close professional and social associates within the workplace? Is there more than one wrongdoer involved in the matter? Is the reported wrongdoing serious? Is or was the reported wrongdoing occurring frequently? Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government? Do these people have the intent to take reprisals – for example, because they have a lot to lose? Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?
Vulnerable discloser	Is or was the reported wrongdoing directed at the discloser? Are there multiple subjects of the disclosure? Is the disclosure about a more senior officer? Is the discloser employed part-time or on a casual basis? Is the discloser isolated – for example, geographically or because of shift work? Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence? Is the disclosure being investigated outside your organisation?*

Extract from the Ombudsman's '[Agency Guide to the Public Interest Disclosure Act 2013](#)'.